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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

23 CR 118 (AT)
Arraignment/Bail

HO WAN KWOK
YANPING WANG

Defendants

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New York, N.Y.
April 4, 2023
11:30 a.m.

Before:

HON. ANALISA TORRES

District Judge

APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

RYAN B. FINKEL

JULIE MURRAY

MICAH FERGENSON

Assistant United States Attorneys

BROWN RUDNICK LLP

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ALEX LIPMAN

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Attorney for Defendant Wang

PRIYA CHAUDHRY

ALSO PRESENT: KARINA CHIN VILLEFORT, PTS (SDNY)
GEOFFREY MEARNS, Paralegal Specialist (USAO)
BRENDA CHEN, Interpreter (Mandarin)

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(In open court)

THE COURT: Good morning.

We are here in the matter of the United States v. Ho Wan Kwok and Yanping Wang.

Would you make your appearances, please.

MR. FINKEL: Good morning, your Honor. Ryan Finkel Julie Murray and Micah Fergenson for the United States. We're joined today at counsel table by Geoffrey Mearns, who is a paralegal in our office.

MR. COOK: Stephen Cook and William Baldiga on behalf of Mr. Kwok, who is present in custody and being assisted by a Mandarin interpreter.

MR. LIPMAN: Your Honor, Alex Lipman of Lipman Law Firm PLLC, and at counsel table also Priya Chaudhry of the Chaudhry Law Firm PLLC for defendant Yanping. Ms. Wang is here, she is present, and she is being assisted by a Mandarin interpreter.

THE COURT: Please be seated.

I would like the interpreter to identify herself, please.

THE INTERPRETER: Good morning, your Honor. My name is Brenda Chen. I'm a certified court Mandarin interpreter.

THE COURT: Please swear in the defendants.

(Defendants sworn)

THE COURT: Please be seated.

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1 Mr. Kwok and Ms. Wang, I'm going to ask some
2 questions. Wait for me to call your name, and then you
3 may answer.

4 Do you understand what the interpreter is saying?

5 Mr. Kwok?

6 DEFENDANT KWOK: Yes, your Honor.

7 THE COURT: Ms. Wang?

8 DEFENDANT WANG: Yes, I do.

9 THE COURT: Do you understand that you're now under
10 oath, and that if you answer any of my questions falsely, you
11 may be prosecuted for perjury based on any false answers?

12 Mr. Kwok?

13 DEFENDANT KWOK: Yes.

14 THE COURT: Ms. Wang?

15 DEFENDANT WANG: Yes.

16 THE COURT: I understand that I must first arraign
17 both defendants, correct?

18 MR. FINKEL: Yes, your Honor.

19 THE COURT: Do you each have a copy of superseding
20 indictment?

21 Mr. Kwok?

22 DEFENDANT KWOK: Yes.

23 THE COURT: And Ms. Wang?

24 DEFENDANT WANG: Yes, your Honor.

25 THE COURT: Has the document been translated for you?

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1 Mr. Kwok?

2 DEFENDANT KWOK: Yes.

3 THE COURT: Ms. Wang?

4 DEFENDANT WANG: Yes.

5 THE COURT: Do you want me to read it to you or do you
6 waive its public reading?

7 Mr. Kwok?

8 MR. COOK: Mr. Kwok waives reading of the indictment,
9 your Honor.

10 THE COURT: Ms. Wang?

11 MR. LIPMAN: Your Honor, Ms. Wang waives the reading
12 of the indictment and asks a plea of not guilty be entered.

13 THE COURT: How do you plead, guilty or not guilty?

14 Mr. Kwok?

15 DEFENDANT KWOK: Not guilty.

16 THE COURT: And Ms. Wang?

17 DEFENDANT WANG: Not guilty.

18 THE COURT: A plea of not guilty will be entered for
19 each defendant, and the record should reflect that both
20 defendants have been arraigned.

21 I'm now going to address Mr. Kwok's bail application,
22 which the government opposes.

23 I have reviewed the parties' submissions dated
24 March 15, 28, and 31 of this year, and April 3 of this year. I
25 have also reviewed the pretrial services report dated March 15

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1 of this year. Judge Lehrburger will hear Ms. Wang's bail
2 application today at 2:00 p.m.

3 Mr. Kwok has been detained since March 15, the date of
4 his arrest. He was arraigned on the preceding indictment
5 before the Honorable Katharine H. Parker and detained on
6 consent without prejudice to a future bail application.

7 Pursuant to 18 United States Code, Section 3142(e),
8 the question I must resolve is whether there is a condition or
9 combination of conditions that will reasonably assure the
10 appearance of the defendant as required and the safety of any
11 other person and the community.

12 To make this bail determination, I must undertake a
13 two-step inquiry. First, I must determine whether the
14 government has established by a preponderance of the evidence
15 that Mr. Kwok presents a serious risk of flight or obstruction
16 of justice. 18 United States Code, Section 3142(f)(2). *United*
17 *States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988). If the
18 government carries this initial burden, I must then determine
19 whether there are reasonable conditions of release that can be
20 set or whether detention is appropriate. To support detention
21 based on danger, the government's proof must be clear and
22 convincing. 18 United States Code, Section 3142(f)(2).

23 The factors that I must consider in making my
24 determination are set forth in 18 United States Code, Section
25 3142(g). They include the nature and circumstances of the

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1 offense charged, including whether the offense is a crime of
2 violence, a violation of United States Code, Section 1591, a
3 federal crime of terrorism, or involves a minor victim or a
4 controlled substance, firearm, explosive or destructive device;
5 the weight of the evidence against the defendant; the history
6 and characteristics of the defendant, including his or her
7 physical and mental condition, family ties, employment,
8 financial resources, length of residence in the community,
9 community ties, past conduct, history relating to drug or
10 alcohol abuse, criminal history, record concerning appearance
11 at court proceedings and whether at the time of the current
12 offense or arrest the defendant was on probation, on parole or
13 other release pending trial, sentencing, appeal or completion
14 of a sentence for an offense under federal, state and/or local
15 law; and the nature and seriousness of the danger to any person
16 or the community that would be posed by defendant's release.

17 I have carefully considered all of these factors and
18 the parties' written submissions.

19 Does the government wish to be heard?

20 MR. FINKEL: Yes, your Honor.

21 Your Honor, there are many aspects of this case, as
22 the Court may be familiar with the indictment, that are
23 extraordinary. This is a billion dollar fraud case, in which
24 Mr. Kwok preyed on thousands of individuals to line his own
25 pockets with extraordinary luxurious items. But the issue

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1 today, your Honor, isn't extraordinary. It's actually quite
2 straightforward. A simple application of the factors that the
3 government has outlined in its letters to the legal framework
4 that the Court just went through makes clear that detention is
5 appropriate is in this case.

6 As this Court knows, pretrial services doesn't often
7 recommend detention in a fraud case, but they've recommended it
8 here, and for good reason. This court should adopt that
9 recommendation.

10 I want to start first with the risk of flight. As the
11 Court mentioned, the government's obligation is to demonstrate
12 just by a preponderance that there is a risk of flight with
13 respect to the defendant. So what we have here again, pretty
14 straightforward: An exceptionally wealthy, exceptionally
15 well-connected, exceptionally sophisticated, deeply experienced
16 world traveler, who is 54 and has barely spent five continuous
17 years in this country. He has at least three, and as many as
18 eleven, different passports. He has a co-defendant who's
19 currently fugitive who's in the UAE right now, or believed to
20 be. The defendant has access to private aircraft and a
21 compelling, exceptionally compelling, motive to flee, your
22 Honor.

23 As a result of the charges in this case, the defendant
24 faces decades in prison. The evidence is incredibly strong.
25 It's not even really disputed by the defense in their briefing.

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1 The indictment itself describes it in detail. At the end of
2 the day, your Honor, simply following the money that the
3 defendant collected, following the money into the pockets of
4 his wife, his children, and himself demonstrates his
5 involvement in this epic fraud.

6 So, again, given the incentive structure, why would
7 the defendant stay? It's simple rational thinking. Why would
8 he subject himself to the court process, to potentially decades
9 in prison, followed by likely deportation, if he can take
10 advantage of an alternative, the alternative of flight.

11 So the defense claims in its briefing that he
12 essentially is incentivized to remain for two primary reasons:
13 The first is that his wife and his daughter are here in the
14 United States, but his wife and his daughter have been here
15 even less time than he has been, and they have an incentive to
16 flee as well. They're referred to in the indictment; they were
17 recipients of the fraud money; and they can leave the country
18 just as easily as the defendant can.

19 And, in any event, the defendant has a son in the
20 United Kingdom, in a foreign country. He certainly would be
21 incentivized to spend time with his son, to be with his son in
22 the same way the defense claims he is incentivized to stay to
23 be with his wife and daughter.

24 Defendants, your Honor, in this courthouse flee with
25 far less global reach than Kwok has. People are willing to

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1 rearrange their lives who have been here for decades to avoid
2 prison. Kwok doesn't even have any meaningful ties in this
3 country that make such a rearrangement impossible or even
4 difficult. He's been here, according to the defense,
5 continually since approximately 2017. That's it. And
6 according to the indictment, he's been involved in this
7 conspiracy since 2018, which means his ties to the United
8 States, your Honor, are about laying the groundwork for and
9 committing a billion dollar fraud.

10 That brings us to the second reason the defense says
11 he's incentivized to stay. They claim he cannot travel
12 anywhere because of fear of being repatriated to China. But
13 that argument doesn't withstand scrutiny either, as we've
14 outlined, your Honor. According to the defense, the defendant
15 fled China in 2015 to escape China. If he was concerned about
16 the Chinese trying to capture him or repatriate him at that
17 time, according to the defense, he wouldn't travel
18 internationally; yet, he did. Even the defense concedes he
19 traveled from 2015 to 2017. His passports make that clear. So
20 he traveled. He wasn't afraid to travel internationally. He
21 wouldn't be afraid to travel internationally now.

22 Then we turn to does the defendant have the ability to
23 flee? This too, your Honor, is fairly straightforward. Kwok
24 has means; he has sophistication; and he has connections, which
25 all make his ability to flee, like I said, straightforward.

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1 I mentioned the passports. But that's not all he has.
2 As the government outlined, your Honor, he had \$394,000 in
3 cash - cash that he didn't tell pretrial services about - in
4 his safe in his mansion in New Jersey. He had another hundred
5 thousand worth of gold coins, foreign currency; and his
6 co-defendant had more than a hundred thousand dollars in a safe
7 in her condo.

8 There was also a document in his co-defendant's
9 apartment demonstrating that Kwok has access to \$34 million in
10 bank accounts. And, your Honor, I can tell the Court that the
11 government has worked quite hard in tracing the fraud proceeds
12 in this case, and we've traced it not just throughout the
13 United States, but we've tried to trace it internationally.
14 And what we've seen is money flowing to Switzerland, to the
15 UAE -- which I'm going to talk more about -- to England, and
16 possibly even Kazakhstan. Yet, the defendant claims that he --
17 let me take a step back for a second.

18 So does the defendant have the financial means to
19 flee? Absolutely. And it's impossible for this Court to have
20 any reasonable assurance of where that bottom is, where his
21 money is, particularly because he lied to pretrial services
22 about the \$394 plus thousand that he had in his mansion.

23 So let's turn to know-how. Does the defendant have
24 the know-how, the sophistication to flee. Again, simple,
25 straightforward. Yes, he does. This is a man who has

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1 cellphone scramblers, Faraday bags, burner phones, obfuscates
2 his funds, uses shell companies, uses intermediaries, and, as I
3 mentioned, has at least three and possibly as many as eleven
4 passports. He's a deeply experienced world traveler, who
5 admitted to pretrial services to traveling to over 50 different
6 countries. That's exceptional. He certainly has a
7 sophistication and know-how to flee.

8 Then the question becomes does he actually have
9 anywhere to go? And the answer to that, your Honor, again
10 simple, straightforward. Yes, he clearly does. He has a UAE
11 passport somewhere. We don't know where it is. We have a copy
12 of it. But what that UAE passport shows is that he's likely a
13 citizen of that country because when you hold a passport that
14 indicates citizenship for a particular country -- and we
15 checked with the office of international affairs, DOJ's OIA
16 office on this -- the UAE does not extradite citizens.

17 And, of course, your Honor, his co-defendant is in the
18 UAE right now, or at least we believe him to be. There are
19 operations for G Clubs, which is an arm of his fraud in the
20 UAE. There are operations for the Himalaya Exchange in the
21 UAE, another arm of his fraud. There were two personnel, two
22 employees of G Club who spent months in the UAE and were able
23 to obtain visas in the UAE. The defendant can go to the UAE.
24 He would be safe, effectively safe from the reach of the
25 government there, and he knows that because he's made

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1 statements about that.

2 So has the government established by a preponderance
3 that the defendant is a risk of flight? Yes. And there really
4 shouldn't be much of a serious dispute about that. So then the
5 question becomes what conditions -- are there conditions that
6 the Court can impose to reasonably assure that there will not
7 than a flight? There aren't any.

8 So let's start with what the defense has put forth.
9 They put forth a \$25 million bond secured by \$5 million cash.
10 Now, if we take a step back for a moment, what is the purpose
11 really of a bond? The purpose of the bond, your Honor, is to
12 change the incentive structure because the defense is
13 incentivized to flee, he's incentivized to get away from
14 possible prison, right? So the thinking of a bond is if he
15 flees, he loses money. So that's supposed to flip the
16 incentive. But it doesn't here. It can't here.

17 And why is that? Because, as the defendant said in
18 his pretrial services report, he claims not to have any money,
19 and whatever money he does have is subject to the bankruptcy
20 proceedings, which is to say all of his money is either
21 forfeitable or encumbered by bankruptcy, so there is no money
22 he could put up that will provide any moral suasion for him to
23 remain.

24 And this, your Honor, it's also important to keep this
25 in mind. The defendant has an uncanny ability to convince

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1 victims to depart with hundreds of millions of dollars. In
2 just weeks, he raised \$400 plus million from thousands of
3 victims. So if he were to lose \$5 million, which is really all
4 he's offering, \$5 million cash, what cost for him? Really
5 none. He can earn it again.

6 And that should raise another question. Where is this
7 \$5 million coming from? If he told pretrial services that his
8 net worth is \$10,000 comprised of the value of his clothing and
9 two cellphones, where is this \$5 million? \$5 million that he
10 hasn't told the bankruptcy trustee about. So there's no money.
11 There's no PRB that could be offered here that flips the
12 incentive for the defendant to remain.

13 What about cosigners? Your Honor, given the
14 allegations in this case, the defendant's fraud is, quite
15 frankly, sociopathic. He has taken money from thousands.
16 Victims have cried in interviews that we have held with them
17 explaining how their lives have been forever altered and
18 damaged by the money that he has used to purchase Lamborghinis
19 and Bugattis and \$30,000 mattresses. He's not going to care if
20 by leaving this country to avoid prison he saddles a couple of
21 people, who he hasn't even named, with a \$25 million judgment.

22 So, the defense, I would argue, your Honor, tacitly
23 concedes all of this. They say that the PRB cosigners are
24 really insufficient and so what they offer instead is or on top
25 is this proposal of armed security. Now, the mere fact that

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1 this is proposed, I submit, this Court should swiftly reject
2 it. Second Circuit, we pointed this out, disapproves of these
3 two-tiered approaches to American justice where the rich get to
4 provide their own private security; in this case, in a
5 defendant's palatial Connecticut estate, where as those without
6 access to his means are subject to the federal system. That's
7 not fair. That's not right. And this Court shouldn't endorse
8 it.

9 But even putting that aside, even putting what the
10 Second Circuit said aside -- and we don't think this Court
11 should -- these security arrangements don't work. They don't
12 work because of incentives. Security personnel are, at least
13 according to the defense, will be answerable to the Court and
14 government. But it doesn't really work that way because
15 they're going to be paid by him. They're going to be paid by the
16 defendant, and security is going to be incentivized to continue
17 to get paid. And security is going to be incentivized not to
18 tell the Court when the defendant does something he shouldn't
19 do because it might risk him being remanded; it might risk
20 security being unable to continue getting paid by the
21 defendant. Security does not work. And if it is true, as the
22 defense claims, that the only way for the Court to be
23 reasonably assured that the defendant won't flee is for him to
24 be surveilled 24 hours a day, seven days a week by an armed
25 guard, there's a proper place for that. And that's the MDC.

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1 But there's something else, your Honor, even putting
2 aside those conditions. Ultimately, when a Court permits
3 pretrial release, it's about trust. It's about trust that a
4 defendant will appear in court as required. It's about trust
5 that a defendant will not endanger the community, which I'll
6 talk about. There is no reason for this Court to trust the
7 defendant, simply based on what has happened since he was
8 arrested. He lied about money that he had in his safe, nearly
9 \$500,000 of it. He didn't disclose his travel documents. He
10 circumvented the rules of the MDC, as we've explained in our
11 papers. There's no reason for this Court to trust him just on
12 those records. And I'm not even talking about what has
13 happened in other cases, which I'll turn to.

14 In fact, let's talk about obstruction. At least three
15 different judges, in both federal and state court, have found,
16 in effect, that the defendant obstructs justice. Judge
17 Ostrager, New York State Supreme Court, said, I'm quoting, "The
18 defendant's efforts to avoid and deceive his creditors by
19 parking his substantial personal assets with a series of
20 corporations, trusted confidantes and family members," which is
21 to say, your Honor, a judge found he moves money around to hide
22 it from the judicial process.

23 Judge Ostrager is not alone. Judge Manning, a
24 Bankruptcy Judge in the District of Connecticut, found similar
25 actions that Kwok has taken. And even worse, Judge Manning

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1 found the defendant fomented unrest, threatened a
2 court-appointed bankruptcy trustee, resulting in death threats,
3 resulting in harassment. And this is on video. This is what
4 the defendant said on video about that bankruptcy trustee.

5 On November 21, 2022, according to the bankruptcy
6 judge's findings, "To deal with this rogue" -- I'm quoting,
7 rogue being the trustee -- "we have our rogue's ways. In a few
8 days you will see what would happen to him. Calamities, I can
9 tell you guys. They will suffer calamities!"

10 On top of that, he encouraged his followers to flood
11 the bankruptcy docket with false claims, to tie up the
12 bankruptcy, to cause the trustee to expend additional resources
13 to cause problems. We talked in our papers about how he's
14 threatened victims, victims in this case; how he's threatened
15 them by saying he would post associations between him and the
16 victim, victims who have family in China, and thereby him
17 posting publicly that he was associated with those victims
18 would threaten the victims' families who happen to be in China.

19 This is all definitional obstruction. It's not
20 theoretical. It's not speculative. It's not even isolated.
21 It's continuous. It's ongoing. It spans multiple years,
22 multiple courts, multiple judges, and the defendant is
23 exceptional in his willingness to continue to do this unabated.

24 So has the government demonstrated that there's a risk
25 of obstruction if he's released? Yes, we certainly have.

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1 So, step two, what conditions can be imposed to
2 prevent obstruction? The answer is there are none. There
3 aren't any. Pretty much all this Court could do is ask the
4 defendant not to obstruct. But we know that doesn't work.
5 Because that was tried in the bankruptcy court in Connecticut.
6 That was tried in the New York State Supreme Court. He doesn't
7 follow court orders. To the defendant, a court's order isn't
8 worth the paper that it's printed on. His low regard for the
9 judicial process and respect for due process is remarkable.
10 And it shows that there are no conditions that can change that
11 because if there were, it would have already happened. So
12 again, this is straightforward. He should be detained.

13 Let's turn to danger. The defendant's willingness to
14 defraud for years thousands upon thousands of individuals is
15 quite something. He's not stopped despite the many offramps
16 that have been the flag, the red flags he's seen, the
17 intervention of the SEC, the government's seizure of
18 \$630 million, his embroilment in various litigations, the fact
19 that entities of his received grand jury subpoenas, the fact
20 that he knew the government was on his tail, he kept going.

21 And in February 2023, just essentially weeks before
22 his arrest, he announced a new offering, the A10 offering.
23 That's what he called it. And he claimed that this offering
24 was a way for investors to invest 5 percent -- to purchase
25 5 percent of the Himalaya Exchange and 5 percent of a social

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1 media company called Gettr. And like the other investments
2 that the defendant has proclaimed and promoted, this too had
3 all the hallmarks of fraud. He claimed it was guaranteed and
4 that they would get their money back and everyone would make
5 all this great money.

6 But the difference about the A10 offering, your Honor,
7 this I think speaks to obstruction and also risk of flight, the
8 of point of it was that the money was going to be sent to the
9 UAE, away from -- and using Kwok's words -- the long-arm
10 jurisdiction of the United States.

11 So is he a continuing danger to the community?
12 Absolutely, because he hasn't stopped. He hasn't stopped after
13 the SEC intervened in the GTV Private Placement, after his bank
14 accounts were closed, after many of his entities received
15 subpoenas, and after the government executed \$630 million of
16 bank account seizures.

17 Indeed, your Honor, the money that the SEC was able to
18 intervene and save from being defrauded with respect to GTV
19 Private Placement, it's now being distributed. It's in the
20 process of being distributed to the victims through a fair fund
21 distribution. And what the defendant has done is encouraged
22 his victims to reinvest that money in other fraudulent
23 vehicles, which is to say he keeps going. He keeps going.

24 So what conditions could the Court impose that would
25 stop all of this? The defense basically offers one. The

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1 defense offers the condition of if he wants to engage in a
2 financial transaction, he must get either the government's or
3 the Court's approval. But this condition is meaningless. It's
4 meaningless because he lies to pretrial services. He
5 circumvents court orders. It's something that can't possibly
6 work because the defendant can't be trusted.

7 But more than that, your Honor, as I've explained and
8 as our papers made clear, he works through intermediaries and
9 shell corporations. He has the ability to conduct fraud
10 without himself, at least on paper, signing a financial
11 transaction. He can work through others. And that's how this
12 whole fraud worked, which is all to say, your Honor, there are
13 no conditions that can prevent the deep, ongoing danger that
14 the defendant presents to this community.

15 Your Honor, given all of this, the defendant's
16 incentive structure, he is highly incentivized to flee, his
17 deep resources, his connections, his network of supporters who
18 will harbor him, his documented unwillingness to follow court
19 orders, his threats against court-appointed officials,
20 including some of the people at this table, his sophistication,
21 his multitude of travel documents, his access to cash, his
22 willingness to lie to pretrial, his willingness to circumvent
23 rules in the MDC, his concealment of funds, there are no
24 conditions, your Honor. There are none that can reasonably
25 assure the Court that he won't flee; that the community will be

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1 safe; and he will not obstruct these proceedings.

2 Pretrial services is correct: The Court should follow
3 their recommendation and detain the defendant pending trial.

4 THE COURT: I'll hear from counsel for Mr. Kwok.

5 MR. COOK: Good morning, your Honor. Stephen Cook on
6 behalf of Mr. Kwok.

7 Just as an initial matter, your Honor, we've seen no
8 evidence that Mr. Kwok threatened anyone at the table, at the
9 prosecution table. I would certainly be interested in seeing
10 that because I'm aware of none of that. He's been in custody
11 since March 15, and we've seen no evidence of any threats being
12 issued to any members of the prosecution team or anyone else,
13 for that matter.

14 Let me just address the very first question that
15 Mr. Finkel stated: Why would he stay? There are many reasons
16 why Mr. Kwok would stay, and there are even more reasons why he
17 would never leave. I want to go through each of the arguments
18 made by the government, but I want to address first this idea
19 that the UAE is this ideal place for Mr. Kwok to abscond to.

20 And the government begins by saying that he has three
21 passports. The government knows that's not true. As they
22 state in their own paperwork, this passport to the country of
23 Vanuatu expired years ago, and it's in their possession in any
24 case.

25 The UAE passport that they don't have, but they claim

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1 that he has, was returned to the UAE government years ago. He
2 renounced his citizenship to the UAE years ago, and received a
3 letter from the UAE government, which I can present to the
4 Court and the prosecution. I would have filed this, but we
5 just learned of this issue yesterday in government's filing.

6 April 11, 2018, he renounces his citizenship, and the
7 UAE confirmed that renunciation. That passport was returned by
8 his immigration counsel to a representative of the UAW
9 government. So he has no UAE passport. He has no passport to
10 Vanuatu. He has no citizenship with that nation. The third
11 passport they reference is one to Hong Kong, the very nation
12 that he fled from, and that passport is in the government's
13 possession. So of the three passports they claim are available
14 for him to use, there are zero, none. And I don't think there
15 can be any dispute about that.

16 Now, Mr. Finkel says quote that "Mr. Kwok knew the
17 government was on his tail." And that's absolutely correct.
18 Hundreds of millions of dollars seized, grand jury subpoenas
19 issued, SEC subpoenas issued; Mr. Kwok has known that he is a
20 target of a federal criminal investigation for the better of a
21 year. And despite his alleged sophistication, despite being
22 essentially a criminal mastermind, an escape artist, what did
23 he do with that knowledge? With all of the resources they
24 claim he has, with the passports he says -- they say he has
25 access to, with all the supporters worldwide, what did Mr. Kwok

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1 do in the face of that knowledge that the government was on his
2 tail?

3 He did nothing. He didn't leave. He went nowhere.
4 He continued to reside in the same residences he had been in
5 for years. All of the evidence that they identify that was
6 found during the search that they point to as evidence of his
7 being a risk of flight: The multiple cellphones, the cellphone
8 scrambler, Faraday bags, cash. If he was this criminal
9 mastermind, knowing the government is on his tail, he left all
10 of those materials in the worst possible place, the place the
11 government knew that he resided.

12 Mr. Kwok was not unfamiliar with an FBI search. Years
13 ago the FBI had searched the Sherry-Netherland residence where
14 he was arrested. He knows how thorough they are. He knows
15 what's involved and how many agents show up. Yet, despite that
16 knowledge and despite the government being on his tail, he did
17 nothing to hide computer equipment or cellphones, with the
18 exception of putting one under his mattress, as if that was
19 going to remain unfound by the FBI. This was not evidence of a
20 man seeking to flee. It was evidence of a man who had decided
21 to stay in the face of the accusations that he knew were coming
22 any day.

23 Why didn't he leave? Well, first of all, there's a
24 Red Notice against him issued by China. We laid out in great
25 detail in our papers why he fled China, why he can never go

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1 back to China, and why they want him, and the enormous efforts
2 the Chinese government and the Chinese Communist Party in
3 particular, have taken to try and get him back in their
4 clutches.

5 This is documented. You read about it, and it sounds
6 like it comes from a spy novel. And then you start looking at
7 the sources and you realize this all really happened.
8 High-level DOJ officials being bribed to get our government to
9 extradite him to China. There's a trial going on in Washington
10 D.C. right now in which an individual failed to register as a
11 Chinese foreign agent, who was lobbying our government
12 illegally to get this man extradited back to China. Four
13 agents of the Chinese intelligent service accosted Mr. Kwok in
14 his home, threatened him, and tried to get him to return to
15 China. They were arrested by the FBI, and because of
16 interjurisdictional squabbles between the State Department and
17 DOJ, they were not arrested, and they were allowed to return to
18 China. But the Chinese Communist Party's interest in my client
19 is well documented, well-known and indisputable.

20 That's why you have cellphone scramblers. The Chinese
21 government hacks at every opportunity every electronic device
22 that Mr. Kwok has. As soon as it's hacked, he replaces it with
23 another one, over and over and over again. That's why you have
24 so many phones and so many computers. That's why there's a
25 cellphone scrambler which was recommended to him by the

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1 security service that he hired to help him prevent this
2 hacking. The Faraday bags designed to prevent hacking. Not by
3 the U.S. government. They weren't hidden from the FBI. But to
4 minimize or help reduce the risk that they would be hacked by
5 the Chinese Communist Party, as has been done over and over and
6 over again.

7 One of the things we didn't mention in our papers, but
8 we recently discovered was that back in 2019 and 2020 Twitter,
9 the social media platform, took down over 200,000 fake accounts
10 all created by the Chinese Communist Party to spew Chinese
11 propaganda. And that propaganda fell into four categories.
12 This is all spelled out by in a report generated by Stanford
13 University. Those four categories, not surprising, were
14 Taiwan, the pro democracy movement in Hong Kong, and the second
15 most prevalent topic, of Chinese propaganda, was Mr. Kwok
16 personally individually documented in the Stanford report.

17 The level of attention that Mr. Kwok generates from
18 the Chinese Communist Party is undeniable and extreme. So he
19 has gone through extreme efforts to protect his ability to
20 broadcast his message to his followers with minimal or reduced
21 obstruction from the Chinese Communist Party. That's why you
22 see all of these elements that you would typically find from a
23 spy novel, for example, present in his apartment. Not because
24 he's hiding it from the U.S. Government. He's trying to
25 protect his ability to get his message out to the millions of

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1 followers that he has worldwide.

2 I want to address the government's arguments
3 individually

4 THE COURT: I would like you to go back to the issue
5 of the passports. Is it your position that he has no valid
6 passport?

7 MR. COOK: The only valid passport that we're aware
8 of -- and Mr. Kwok wasn't even aware of this until we saw it in
9 the government's filing -- is the Hong Kong passport that was
10 in his co-defendant's possession, that the government now has.
11 That was the only currently valid passport. The other two he
12 previously had -- Vanuatu and UAE -- he renounced his
13 citizenship to both of those nations formally as part of his
14 asylum application years ago. That's it. There are no others.

15 THE COURT: Go ahead.

16 MR. COOK: Concerning Mr. Kwok's extensive
17 international travel, it's -- well, he did travel extensively
18 at one point in his life, but for the past six years, he hasn't
19 stepped foot outside this country. There's many good reasons
20 for that:

21 (1) His asylum application, which places restrictions
22 on that sort of travel.

23 (2) The Chinese Red Notice out against him.

24 (3) The four Chinese agents that accosted him in 2017
25 highlighted and elevated his level of concern as to his own

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1 safety were he to leave the United States to a level that
2 hadn't been seen before.

3 So he -- for example, his family had planned a couple
4 of years ago a vacation to Hawaii. He was advised not to even
5 take that vacation because if there was a mechanical problem
6 with the plane, it could land at a foreign country, and he
7 could run into problems. He faces almost certain death if he
8 is repatriated to China. He will do nothing to jeopardize
9 that, even if it means spending time in a U.S. prison.

10 The government claims that, well, his asylum
11 application could be revoked if he's convicted. That may be
12 true. That's years down the road. That's a hypothetical. The
13 consequences if he were to leave are a certainty. He would
14 also have opportunity to seek asylum or protection under the
15 Convention Against Torture. Yes, that could mean deportation
16 to a third country, but far preferable to living life on the
17 run with a Red Notice from the Chinese superpower and another
18 Red Notice from the American superpower, there's literally
19 nowhere left in the world for him to reasonably go under those
20 circumstances. He cannot flee. There is nowhere he can go
21 where he would be safe. He is here. Whether he wants to or
22 not, he is here, and he has been here for the past six years,
23 and that is evidence alone of his desire to remain even in the
24 face of the government's investigation.

25 The foreign passports we've talked about, your Honor,

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1 and none of them have been used, in any case, for at least six
2 years.

3 We talked about the UAE. In addition to the
4 renunciation of that citizenship, Mr. Finkel mentions that
5 there is no extradition treaty between the United States and
6 UAE were Mr. Kwok to flee there. That's true. However, the
7 UAE does have an extradition treaty with China. China and the
8 UAE have extensive connections. In fact, the UAE is China's
9 number one beneficiary of foreign investment of all the states
10 in the Gulf. The relationship between the UAE and China is
11 well-documented and public. The extradition treaty is public
12 as well. That is probably the worst place he would go, second
13 to China itself. So UAE is out. It was never an option, even
14 were he to want to leave this country.

15 The currency found during the execution of the search
16 warrants, the hundreds of thousands of dollars. First of all,
17 the three residences that were searched: The Sherry-Netherland
18 penthouse, the Greenwich estate, and the property in Mahwah,
19 none of those properties are owned by Mr. Kwok. They're owned
20 by other entities or other family members, not him. They are
21 used by many family members, dozens of employees of many
22 different companies, not just Mr. Kwok. None of that money was
23 his. He didn't have access to the safes, and in at least two
24 of those cases didn't even know those safes existed. They
25 weren't in his bedroom. One of them belonged to his wife, and

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1 he didn't know the combination. So he didn't lie to pretrial
2 services. He didn't even know the money was there. That's the
3 reality.

4 And so the assumptions that are being made by the
5 government, as they've made assumptions in all these other
6 areas are skewed entirely in a way to portray Mr. Kwok in the
7 worst possible light. The reality is the money wasn't his. He
8 had no reason to disclose something he didn't know existed.

9 Concerning the cellphones and the scrambling device
10 and Faraday bags, I mentioned that, your Honor. These are
11 recommendations made by his security staff who made every
12 effort to try and minimize the hacking that took place. And to
13 give you another example of just what he and anyone associated
14 with Mr. Kwok experienced from China.

15 A law firm that was retained to assist him with his
16 immigration asylum paperwork was hacked. Confidential
17 information stolen from the law firm and publicly disseminated.
18 Another law firm that was retained in connection with
19 bankruptcy proceedings was hosting a conference call with 30 or
20 40 people from all over the world, including the U.S. trustee.
21 On the day of that meeting, immediately prior to, that law
22 firm's entire security system electronically was hacked and
23 shut down. The elevator system was shut down causing a delay
24 in the meeting. It never happened before and hasn't happened
25 since. These sorts of hacking efforts and attempts follow him

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1 wherever he goes simply because of who he is and the message
2 that he espouses.

3 Concerning the civil lawsuits and the bankruptcy
4 litigation and Mr. Kwok's alleged disregard for the law, first
5 of all, it's important to keep in mind that much of the civil
6 litigation, including the civil litigation that ultimately led
7 to the bankruptcy filing was prompted by the CCP itself. That
8 is not just a conspiracy theory. That is a documented fact.
9 In fact, the *Wall Street Journal* in July of 2020 wrote an
10 article, "China's New Tool to Chase Down Fugitives: America
11 Courts. Beijing is turning to lawsuits to pressure expatriates
12 to return home and face corruption charges as an end run around
13 U.S. law." Their efforts to use the court system to leverage
14 and exert pressure against people they don't like is documented
15 and well-known and something that Mr. Kwok knows of firsthand.
16 So Mr. Kwok has aggressively defended himself in all of that
17 litigation and in the bankruptcy proceedings.

18 Now, concerning the source of the \$5 million security
19 for the bond. We never in our papers suggested Mr. Kwok would
20 or even could himself put umm \$5 million. However, what we
21 proposed was that there would be two financially responsible
22 adults who would sign onto that bond, and that the source of
23 that money would be vetted with the government so they could
24 assure themselves that the source had nothing to do with the
25 fraud in this case, and that the two financially responsible

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1 adults, one of whom would not be a family member, they could
2 also vet to assure not only that they are not purported
3 victims, but that they had moral suasion over the defendant.

4 The government also claims that Mr. Kwok -- they
5 allude to this in their paperwork -- that he fails to follow
6 Bureau of Prisons' procedure in connection with some family
7 members who wanted to make phone calls with Mr. Kwok, and they
8 used the legal pathway for legal calls instead of family calls.
9 We looked into that, your Honor, and, in fact, our ability to
10 communicate with our client via telephone was shut down because
11 of that. We found out what happened. It was a mistake. We
12 wrote to the Bureau of Prisons explaining exactly what
13 happened. In fact, the person who did this even wrote in the
14 application for calls "this is for family calls." It was a
15 language issue and miscommunication on their part that we
16 corrected. It hasn't happened again and won't happen again,
17 and our legal calls have been reinstated. This has absolutely
18 nothing to do with anything Mr. Kwok did or even knew about at
19 this time, so it would be completely unfair to hold that
20 against him.

21 We also proposed this round-the-clock 24/7 security.
22 It's interesting Mr. Finkel says it's not fair and not right
23 when this exact procedure is something the government has
24 signed off on in other cases, but apparently in this case it's
25 not fair and not right. Look, we don't think it's necessary.

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1 We don't think he is leaving. We don't think he would ever
2 leave this country. However, we offered that as additional
3 assurance and security that he would in fact remain here and
4 can be monitored by professionals, and we said armed security
5 not because we need them to be armed, but because armed
6 security happened to be current or former law enforcement
7 adding a level of professionalism. And we can arrange that
8 engagement in any way the Court deems acceptable so that they
9 report directly to the marshals, to the FBI or to the Court,
10 and not to us. We can fashion that engagement in whatever way
11 works. The government has done this before and done it in an
12 acceptable fashion. There's no reason why it can't work in
13 this case as well as an additional layer of protection against
14 flight.

15 Concerning his purported efforts to contact victims or
16 set up new businesses or perpetrate additional frauds, that can
17 be dealt with as well. The Southern District has dealt with
18 something in the SBF, Sam Bankman-Fried, case where they
19 restricted his access to any electronic communications to a
20 single laptop that is restricted to allowing the defendant
21 access to the discovery so they could review it and to
22 communicate with lawyers, and nobody else. If that is the
23 government's legitimate concern that he is going to continue to
24 communicate with the world and perpetrate frauds, we're
25 amenable to that condition. There are conditions to satisfy

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1 each of these concerns, and we can fashion them. To date the
2 government has simply been unwilling to even have a
3 conversation with us about it, but it's not impossible.

4 Finally, your Honor, I just want to note for the
5 record and for your Honor that the courtroom is full of many of
6 Mr. Kwok's supporters, many of whom have traveled from San
7 Francisco, North Carolina, around the country to be here in
8 support. These are the purported victims? No, they're
9 actually his supporters. They are here because they care about
10 him. They care about his message and his mission in connection
11 with bringing democracy to China.

12 Your Honor we remain open willing to employ any
13 reasonable condition as the Court may deem necessary to secure
14 Mr. Kwok's release. We think what we've proposed is acceptable
15 and sufficient. We will certainly entertain anything further,
16 and we're happy to work with the government if they're willing
17 to tailor or contour our proposal to work out any of the
18 legitimate issues that they might have

19 THE COURT: I want to go back to the passports.
20 You're saying that your client wrote to the government of the
21 United Arab Emirates declaring that he had renounced
22 citizenship. Is that correct?

23 MR. COOK: Your Honor, I have the letter. If I could
24 approach, I'm happy to provide the Court a copy.

25 THE COURT: You may. Thank you. I assume you don't

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1 have a certified version of this.

2 MR. COOK: This is all I could get on such short
3 notice, your Honor. I would note the picture of the passport
4 submitted in the government's letter yesterday has redacted the
5 passport number which is contained in this letter, so I have no
6 way to confirm that the numbers match up, but I presume that
7 they do. In any case, I can represent to the Court that the
8 passport itself was hand-delivered to UAE, I believe it was the
9 consulate, by Mr. Kwok's immigration counsel.

10 THE COURT: You're relying on your client's word on
11 that issue?

12 MR. COOK: I'm relying on the word of my client's
13 lawyer, his immigration counsel, on that issue. I can get a
14 declaration from him to that effect, your Honor.

15 THE COURT: And the Vanuatu passport?

16 MS. McKINNEY: The Vanuatu passport, you can see in
17 the picture submitted by the court, expired, and the government
18 noted in its letter that it had other evidence, which it didn't
19 talk about, suggesting that that citizenship had been
20 renounced. I haven't seen any of that yet, but I know that to
21 be the case from my consultations with his immigration counsel.

22 THE COURT: I'll allow rebuttal by the government.

23 MR. FINKEL: Thank you, your Honor.

24 If I can, your Honor, I'd like to start with the
25 passport issue.

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1 First, the defendant has proclaimed to have eleven
2 passports, not just three. What I would also ask is, your
3 Honor, how many defendants within a period of three or four
4 years were able to obtain citizenship in three different
5 countries and was on a pathway, or so he claims, to citizenship
6 in a fourth, which is to say, your Honor, the defendant
7 obtained citizenship in Vanuatu, obtained UAE citizenship, has
8 a Hong Kong citizenship, and was trying to obtain citizenship
9 here. He knows how to get travel documents. He was able to do
10 it at least two other times, while he was on the run, according
11 to the defense. So can he do it again? Of course he can.

12 And, your Honor, I just want to be clear about
13 something else. Our burden is not to show that he will flee
14 internationally or go to a place where he can't be extradited.
15 The question is whether he will return to Court as required.
16 People flee within the United States, as your Honor knows.
17 And, your Honor, the defendant, as defense counsel has not
18 disputed, has a broad network of people who are sympathetic to
19 him, who, according to their social media posts, believe that
20 all of this is a political charge, which is to say they're
21 motivated to help him. And it's not. Those are meritless
22 claims, of course. This is a fraud crime that is substantiated
23 by a significant amount of evidence which we have outlined in
24 our papers.

25 Your Honor, the defendant has been hiding. To respond

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1 to defense counsel's arguments: He hides behind his family, by
2 keeping entities and properties not in his name. He hides
3 apparently by saying that the \$394,000, just to be clear, was
4 in a safe that was attached to a dressing room in which his 31
5 suits that have his name hand-stitched into them were there.
6 It is simply not credible, it is not credible for him to be
7 unaware of \$394,000 in United States currency that he didn't
8 disclose to pretrial services.

9 Your Honor, it's a big planet, and it's a big country.
10 There are places for him to go that would be beyond the reach
11 of China; that are beyond the reach of the United States. But
12 the Court doesn't need to find that. The question is whether
13 there's a risk of flight, the risk that he won't appear in
14 court, and the government has certainly met that burden.

15 Your Honor, the fact that defense counsel concedes
16 that the \$5 million they're offering to put up is not from the
17 defendant means it has no moral suasion on him at all. There
18 is no reason for him not to leave because he wouldn't be
19 concerned about giving up money that wasn't even his to begin
20 with. Your Honor, if this money was clean and unencumbered by
21 both the fraud and the bankruptcy, I would have expected the
22 defense to explain where it's from. I would have expected the
23 defense to explain who their cosigners could be, who would have
24 the unencumbered assets to support a \$25 million bond for the
25 defendant and also moral suasion over him.

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1 Your Honor, with respect to armed security, the only
2 other case I'm aware of that happened in this district where it
3 was approved was before Judge Broderick. It was over Southern
4 District's objection. And in that case there were a host of
5 problems that occurred because the incentive structure doesn't
6 work. Armed security took the defendant out to dinner. Armed
7 security ate with the defendant, which is not really a good
8 idea if, you know, an armed security guard eats something and
9 then falls asleep and the defendant can flee. Armed security
10 didn't report violations. It doesn't work. And, fundamentally
11 -- and the Second Circuit has been crystal clear about this --
12 fundamentally, it is wrong.

13 What I haven't heard also from the defense, your
14 Honor, is how their conditions can satisfy the very real
15 concerns about the danger to the community and the danger to
16 this judicial process. There are no conditions that satisfy
17 that.

18 And, your Honor, as we've outlined, and as I've
19 explained earlier, this has been documented by three judges.
20 Three judges have found the defendant to essentially be
21 obstructing, including an extensive opinion that we attached
22 for your Honor to our March 15 submission, in which the
23 bankruptcy judge makes clear that the defendant is causing his
24 supporters to flood the docket or threatened with calamities
25 the court-appointed bankruptcy trustee. None of the conditions

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1 proposed by the defense, none of them, none, can stop that.

2 Your Honor, the defendant has incredible means and
3 know-how, as the defense concedes. He apparently has access to
4 friends who are willing to front \$5 million -- \$5 million in
5 cash. He can go where he wants. He has a network of people
6 who will harbor him. He has international travel -- deep
7 international travel experience, the ability to obtain travel
8 documents from multiple different countries, apparently
9 citizenship in multiple different countries. He has places to
10 go. He has people who will help him. He has a reason to flee.
11 And the asylum application, your Honor, the mere charges in
12 this case threaten that. It's true. The asylum application is
13 still pending, but the mere charges in this case threaten the
14 asylum application.

15 The point is, your Honor, on flight, he's motivated to
16 flee. He has the means and know-how to do it, and there is no
17 condition that can stop that.

18 On danger, he continues to endanger the public, and
19 that hasn't stopped, and there are no conditions that can stop
20 that.

21 And on obstruction, your Honor, as three other courts
22 have made clear, the defendant continues to obstruct the
23 judicial process. He will obstruct it in this criminal case
24 too.

25 There are no conditions, none, there are no conditions

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1 that can stop that.

2 At the end of the day, this is very straightforward.
3 This is very simple, we submit to the Court, the defendant
4 should be detained because he's a risk of flight, he presents a
5 danger, and he will obstruct.

6 THE COURT: All right. I'm going to reserve decision.
7 I'll issue a written decision. The matter is
8 adjourned.

9 (Adjourned)

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